

## **GOVERNMENT PROPERTY**

[FP – NR&D, FP – R&D, CIS, FPC – 09/04] [FAR 52.245-2 – 06/03]

(This deletes and is substituted for the Article of this Subcontract entitled "Government Property.")

(a) Government-Owned/JPL-Furnished Property (hereafter "GFP").

- (1) JPL shall deliver to the Subcontractor, for use in connection with and under the terms of this Subcontract, the property described in the Schedule or specifications together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property.
- (2) The delivery or performance dates for this Subcontract are based upon the expectation that GFP suitable for use (except for property furnished "as-is") will be delivered to the Subcontractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the Subcontract's delivery or performance dates.
- (3) If GFP is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify JPL, detailing the facts, and, as directed by JPL and at JPL expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, JPL shall make an equitable adjustment as provided in paragraph (h) of this Article.
- (4) If GFP is not delivered to the Subcontractor by the required time, JPL shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (h) of this Article.

(b) Changes in GFP.

- (1) JPL may, by written notice, (i) decrease the GFP provided or to be provided under this Subcontract, or (ii) substitute other GFP for the property to be provided by JPL, or to be acquired by the Subcontractor for JPL, under this Subcontract. The Subcontractor shall promptly take such action as JPL may direct regarding the removal, shipment, or disposal of the property covered by such notice.
- (2) Upon the Subcontractor's written request, JPL shall make an equitable adjustment to the Subcontract in accordance with paragraph (h) of this Article, if JPL has agreed in the Schedule to make the property available for performing this Subcontract and there is any:
  - (A) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
  - (B) Withdrawal of authority to use this property, if provided under any other Subcontract or lease.

(c) Title.

- (1) The Government shall retain title to all GFP.
- (2) All GFP and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government Property"), are subject to the provisions of this Article. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
- (3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling Article) acquired by the Subcontractor for JPL under this Subcontract shall pass to and vest in the Government when its use in performing this Subcontract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.
- (4) If this Subcontract contains a provision directing the Subcontractor to purchase material for which JPL will reimburse the Subcontractor as a direct item of cost under this Subcontract:
  - (A) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
  - (B) Title to all other material shall pass to and vest in the Government upon:
    - (i) Issuance of the material for use in Subcontract performance;

- (ii) Commencement of processing of the material or its use in Subcontract performance; or
  - (iii) Reimbursement of the cost of the material by JPL, whichever occurs first.
- (d) Use of Government Property. The Government property shall be used only for performing this Subcontract, unless otherwise provided in this Subcontract or approved by JPL.
- (e) Property Administration.
  - (1) The Subcontractor shall be responsible and accountable for all Government property provided under this Subcontract and shall comply with FAR Subpart 45.5, and any corresponding implementing or supplementing provisions in the NFS, as modified by the JPL document "Management of Government Property in the Possession of Subcontractors" (JPL 0968, a copy of which is attached to and made a part of this Subcontract), as in effect on the date of this Subcontract.
  - (2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR, and any corresponding implementing or supplementing provisions in the NFS.
  - (3) If damage occurs to GFP, the risk of which has been assumed by JPL under this Subcontract, JPL shall replace the items or the Subcontractor shall make such repairs as JPL directs. However, if the Subcontractor cannot affect such repairs within the time required, the Subcontractor shall dispose of the property as directed by JPL. When any property for which JPL is responsible is replaced or repaired, JPL shall make an equitable adjustment in accordance with paragraph (h) of this Article.
  - (4) The Subcontractor represents that the Subcontract price does not include any amount for repairs or replacement for which JPL is responsible. Repair or replacement of property for which the Subcontractor is responsible shall be accomplished by the Subcontractor at its own expense.
- (f) Access. JPL or the Government and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- (g) Risk of Loss. Unless otherwise provided in this Subcontract, the Subcontractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Subcontractor or upon passage of title to the Government under paragraph (c) of this Article. However, the Subcontractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this Subcontract.
- (h) Equitable Adjustment. When this Article specifies an equitable adjustment, it shall be made to any affected Subcontract provision in accordance with the procedures of the "Changes" Article. When appropriate, JPL may initiate an equitable adjustment in favor of JPL. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. JPL shall not be liable to suit for breach of Subcontract for:
  - (1) Any delay in delivery of GFP;
  - (2) Delivery of GFP in a condition not suitable for its intended use;
  - (3) A decrease in or substitution of GFP; or
  - (4) Failure to repair or replace Government property for which JPL is responsible.
- (i) Final Accounting and Disposition of Government Property. Upon completing this Subcontract, or at such earlier dates as may be fixed by JPL, the Subcontractor shall submit, in a form acceptable to JPL, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this Subcontract or delivered under this Subcontract. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the Subcontract price or shall be paid to the Institute as JPL directs.
- (j) Abandonment and Restoration of Subcontractor's Premises. Unless otherwise provided herein, the Government through JPL:
  - (1) May abandon any Government property in place, at which time all obligations of the Government and the Institute regarding such abandoned property shall cease; and
  - (2) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon Subcontract completion). However, if the GFP

(listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this Article may properly include restoration or rehabilitation costs.

- (k) Communications. All communications under this Article shall be in writing.
- (l) Overseas Subcontracts. If this Subcontract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this Article) shall be construed as "United States Government" and "United States Government-furnished," respectively.